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RECENT CASES.

ATTORNEY & CLIENT—LIEN—PRIORITY—SET-OFF.—SMITH v. CAYUGA LAKE CEMENT CO., 95 N. Y. SUPP. 236.—*Held*, that where a judgment for plaintiff is wholly for disbursements incurred and services rendered by his attorney in correcting an erroneous decision, and plaintiff is a non-resident and insolvent, the attorney's lien for costs and compensation is superior to the defendant's claim for a set-off on a judgment in his favor rendered by another court in the same action.

The practice of courts, both in England and in this country, has differed widely in regard to this proposition. In England, the attorney's right to have his fees and disbursements paid out of the judgment obtained has long been recognized. *Marshall v. Meech*, 10 Am. Rep. 573. The courts of Common Pleas and Chancery held the lien subordinate to defendant's right of set-off. *Taylor v. Popham*, 15 Ves. 79. Later, these courts reversed their position and adopted the rule of the Court of King's Bench. *Simpson v. Lamb*, 49 Eng. L. & Eq. 59. The same rule was adopted by the Supreme Court of New York in the early case of *Devoy v. Boyer*, 3 Johns. 247. In the majority of states the attorney is deemed, to the amount of his lien, an equitable assignee of the judgment. *Marshall v. Meech*, 10 Am. Rep. 573. On the other hand, the courts of a few states hold the right of set-off is superior to the attorney's lien. *McDonald v. Smith*, 57 Ves. 502; *Mosely v. Norman*, 74 Ala. 422.

CONSTITUTIONAL LAW—FEDERAL COURTS—HABEAS CORPUS—CONCLUSIVE-NESS OF STATE DECISION.—BROWN v. URQUHART, 139 FED. 846.—*Held*, that the decision of the Supreme Court of a state that a state prisoner is not held in violation of rights under U. S. Constitution is not conclusive upon a federal court, which may, in its discretion, determine the question for itself on a writ of *habeas corpus*.

The decision of the highest court of a state should be obtained and carefully reviewed before a writ issue from a federal court. *People of N. Y. v. Eno*, 155 U. S. 89. And the petition must clearly show an irreconcilable antagonism between the federal and state law, otherwise the writ will not issue. *In re Hoover*, 30 Fed. 51. A claim under a provision in a state law would not justify a writ of *habeas corpus* by a federal court. *Gut v. Minnesota*, 76 U. S. 35; *In re Bresnahan*, 18 Fed. 62; *In ex parte Calvera*, 1 Wash. C. C., a foreign minister, illegally confined under a proper state warrant, was refused a writ. A noted case was *Whitten v. Tomlinson*, 160 U. S. 231, where, although an indictment lacked the words "a true bill," and was found by the grand jury by mistake and misconception, the federal courts refused to interpose.

CONTRACTS—PROMISE TO ANSWER FOR THE DEBT OF ANOTHER—STATUTE OF FRAUDS.—SMITH v. BURDETT, 95 N. Y. SUPP. 188.—*Held*, that an oral agreement by an owner to pay for the work and material furnished by a sub-contractor in the construction of a building, in case the principal contractor neglected to do so, is unenforceable because within the Statute of Frauds.

The interest which the promisor has in the performance of a contract by another, or the benefit which he may derive thereby, cannot determine his lia-